IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.1677/2002
M/s TRUPATI VELVET PVT. LTD.
V/s
RAJ. FINANCIAL CORPORATION & OTHERS.

DATE OF ORDER 21.2.2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Rajesh Kapoor for the petitioner.
Shri Dinesh Sharma)
Shri Prahlad Singh), for the respondents.

Heard learned counsel for the parties.

The petitioner has challenged the auction proceedings dated 19.11.2001 by placing reliance on the Judgment of the Supreme Court in Mahesh Chandra v/s Regional Manager (AIR 1993 SC 965). The petitioner had taken loan of Rs.26.25 lacs from RFC for manufacturing velvet clothes which was repayable within eight years in quarterly installments and the first installment was due on September, 1996. He could not however re-pay the loan and the factory premises which were mortgaged with the RFC were taken over by them and thereafter the same was auctioned on 19.11.2001. The highest bid received was of Rs.18.25 lacs and it was informed to the petitioner by respondents on 6.12.2001 that if he can give a higher bid than the said amount, the same be informed by 30.11.2001. The higher bid over Rs.18.25 lacs along with 5% earnest money was to be submitted by

the petitioner latest by 30.11.2001, thereafter it would be presumed that the petitioner was no more interested in giving the higher bid.

Shri Rajesh Kapoor, learned counsel for the petitioner argued that the action of the respondents was mala fide inasmuch as confirmation of the sale was illegally made on 4.12.2001. This was liable to be annulled because no opportunity of hearing was provided to the petitioner. The petitioner was ready to pay the amount of Rs.18.25 lacs as has been offered by the highest bidder.

On the other hand, learned counsel for the respondents opposed the writ petition and submitted that not only the auction proceedings which had been taken place itself was confirmed and the offer of the petitioner that he was prepared to give the same amount of Rs.18.25 lacs as bid, was not bonafide because the petitioner was informed by by communication dated 19.11.2001 to give a higher bid together with 5% earnest money to which he failed to respond. It was argued that the petition involved number of disputed questions of fact which cannot be appropriately gone into by this court in exercise of its writ jurisdiction under Article 226 of the Constitution.

Learned counsel for the respondent No.4 submits that having been taken possession of the same, his client has already raised construction.

Having heard learned counsel for the parties, I find that apart from the fact that the number of disputed

questions of fact are there and the matter involves contractual dispute between the parties, the Supreme Court judgment on which the reliance has been placed by the learned counsel for the petitioner has itself been later over-ruled by a three Judge Bench of the Hon'ble Supreme Court in Haryana Financial Corporation & Another v/s Jagdamba Oil Mills & Another (2002) 3 SCC 496). The petitioner, if wants, may seek his remedy in the civil suit which according to his averments in the writ petition was filed before the civil court.

In the facts of the case, I do not find any merit in the writ petition and the same is dismissed.

(Mohammad Rafiq),J.

chauhan